

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

DAVID MYRIE,)	
)	
Plaintiff,)	
)	
vs.)	No. CIV-10-875-C
)	
FEDERAL BUREAU OF PRISONS, et al.,)	
)	
Defendants.)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff brought the present action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), seeking recompense for alleged violations of his constitutional rights. Specifically, Plaintiff asserts that the Federal Bureau of Prisons (“BOP”) and Defendant Hansen violated his constitutional rights by not protecting him from other inmates. Consistent with the provisions of 28 U.S.C. § 636(b)(1)(B), this action was referred to United States Magistrate Judge Gary M. Purcell. Judge Purcell entered a Report and Recommendation on September 26, 2011, to which Plaintiff has objected.

The facts and law are accurately set out in the Magistrate Judge’s Report and Recommendation and there is no purpose to be served in repeating them yet again. As Judge Purcell noted, the BOP enjoys sovereign immunity from Plaintiff’s monetary claims. As for the injunctive relief claims against BOP, as Judge Purcell correctly noted, the relief sought by Plaintiff is beyond the scope of a Bivens-based claim. Plaintiff’s claims against Defendant Hansen also warrant dismissal, as Plaintiff seeks to impose liability where the undisputed facts clearly demonstrate relief is not warranted. The only issue raised in

Plaintiff's Objection that warrants additional comment is his "affidavit" which is appended to his Objection. In that "affidavit," Plaintiff attempts to broaden the scope of his claims by now arguing that he was in danger from all Hispanics rather than only the single unnamed person of whom he originally complained. The Court need not consider the "affidavit," as it was raised for the first time in objection to the Report and Recommendation and therefore is waived. See Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge (Dkt. No. 40), and for the reasons announced therein, DISMISSES with prejudice Plaintiff's Bivens claim against Defendant Federal Bureau of Prisons; DISMISSES with prejudice Plaintiff's claims for injunctive relief; and construes Defendant Hansen's Motion to Dismiss as a Motion for Summary Judgment and GRANTS the motion. A separate judgment will enter.

IT IS SO ORDERED this 14th day of December, 2011.


ROBIN J. CAUTHRON
United States District Judge